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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.332 OF 2002

Jagan Nanda Khairnar).. APPELLANT

VERSUS

The State of Maharashtra).. RESPONDENT

Mr.A.R. Shaikh with A.A.Salem for the Appellant.

Dr.F.R. Shaikh, Additional Public Prosecutor, for the Respondent.

CORAM: V.G. PALSHIKAR, AND SMT. NISHITA MHATRE, JJ.

DATED: 12TH OCTOBER 2006

ORAL JUDGMENT : (PER SMT.MHATRE, J.)

. The accused-Appellant has challenged the order of the First Ad-hoc Additional Sessions Judge, Malegaon convicting him under Section 302 of the Indian Penal Code and sentencing him to life imprisonment.

2. The case of the prosecution is that the complainant, Sitabai, the wife of the deceased, and the rest of her family were present on 9th May 2000 in the house. Her son Jagan, the accused, came to the house and questioned his father, the deceased, about the distribution of the agricultural lands. He was not satisfied with the partition of the land belonging to his father which had taken place about eleven years

prior to the incident. The deceased had allotted him and his two brothers 3 acres each as their share. The accused had sold his share to his sister Yamunabai and with the sale proceeds had purchased land elsewhere. He was also aggrieved by the fact that his parents were looking after the widow and family of his brother, Sajan who had died in 1997. The accused did not appreciate the fact that Sajan's son was looking after the lands owned by the deceased and Yamunabai. The accused had not maintained relations with his parents. According to the prosecution, on 9th May 2000 the accused went to his father's residence and stabbed him in the abdomen with a sickle as a result the intestine fell out. Yamunabai, the sister of the accused, tried to intervene, when the accused struck a blow with a sickle on her left hand. The members of the family and other brothers rushed the victim and Yamunabai to the nearest Rural Hospital. The deceased succumbed to the injuries within 15 or 20 minutes of his admission to the hospital. Yamunabai was treated for the injury sustained by her.

3. The accused was apprehended and was charged for having committed the murder of his father and for inflicting and injuring Yamunabai.

4. We have perused the judgment of the trial Court. We have found that the learned Judge has by a process of

proper reasoning and marshalling of facts and evidence before him reached an appropriate conclusion that the accused is guilty of the offence punishable under Sections 302 and 324 of the Indian Penal Code. The learned Judge has rightly sentenced the accused to life imprisonment. However, since this is an Appeal, we have considered the entire evidence afresh and reappreciated the same.

5. The evidence led by the prosecution consists of the eye witness account of PW5 and PW6. PW1 is the complainant, who after hearing the cries of PW5, found her husband injured. PW2 is a neighbour who has also seen the injuries caused to the victim and PW6. PW3 is the panch who has spoken about the recovery of the sickle at the instance of the accused. PW4 is the Medical Officer who was on duty when the accused was brought to the Rural Hospital. PW7 is the Assistant Police Inspector who conducted the investigations.

6. Sangeeta, the grand-daughter of the deceased and PW1, was examined as PW5. Her father Sajan expired in 1997 and since then she, her mother and her brothers and sisters were staying with her grand-parents. She had returned after marriage to her grand-father’s place for a few days. She has narrated the incident that occurred on that day when her uncle stabbed her grand-father.

She was in the courtyard at about 8.00 a.m., waiting to be taken to the dispensary by her grand-father as she had suffered some burn injuries. The accused came to the house, went near the deceased, whipped out a sickle which was at his waist and was about to assault the deceased. The deceased by a reflex action raised his hand to ward off the blow. In the process he sustained an injury on his left hand between the thumb and the index finger. The accused then stabbed him in the abdomen with the sickle, as a result of which, according to this witness, the intestines were gouged out. She screamed. The other members of the family rushed to aid her grand-father. Neighbours also came to the spot and them covered the abdomen with a cloth. She has stated that her grand-father was then taken to the Rural Hospital. The testimony of this witness has not been shaken in cross-examination. However, this witness does not speak of any assault on her aunt, Yamunabai.

7. PW6, Yamunabai, has spoken about the animosity that the accused harboured against her father which resulted in the death of her father. She has narrated that the accused demanded a share in the property from her father when he arrived at the father’s residence on 9th May 2000. Her father refused saying that he would not give him a share during his life time. The accused, according to this witness, then stabbed her father in

the abdomen which resulted in his intestine falling out. She has stated that she tried to save her father when the accused exclaimed that she was enjoying his share in the family property. The accused then wounded her on her left hand resulting in an injury which required eight stitches. This witness has spoken about her mother PW1 rushing to the spot when she heard the cries of Sangeeta. She has also stated that PW2 their neighbour had reached the spot first when she heard her cries from their house. This witness has not departed from this version while being cross-examined.

8. The complainant, PW1, has narrated the entire incident as it occurred. She has in all material particulars corroborated the evidence of PW5 and PW6. Her testimony does not differ from the FIR lodged by her and is believable. There are no material contradictions or omissions in her testimony.

9. The other witness who has seen the victim after he was injured is PW2. This witness has stated that she rushed to the house of the deceased only after she heard the children of the deceased crying out. She saw the members of the family and other neighbours who had gathered around the deceased. She has also described the injury sustained by the deceased. The evidence of this witness is not very material as she had no personal

knowledge about the actual incident.

10. The next witness examined is the Medical Officer, Rural Hospital. He has described the injuries sustained by the deceased. He has spoken about the immediate treatment administered to the deceased which proved to be futile as the deceased succumbed to his injuries within ten to fifteen minutes of his admission to the hospital. He has stated that the incised injury sustained by Yamunabai was due to a sharp object. It appears that the medical certificate indicates that the injury was inflicted on the right hand. However, the witness explained that due to the rush at the hospital, there was an apparent mistake and the injury was inflicted on the left hand of Yamunabai. When PW6 was examined, it was noticed that she had a scar on her left hand and not the right hand.

11. PW3 is the panch witness who has deposed regarding the recovery of the sickle at the instance of the accused. PW7 is the Investigating Officer who has sent the sickle and the clothes of the deceased and the accused for chemical analysis. The panch witness has stated that the sickle bore blood stains. The clothes which were also blood stained. The report from the Chemical Analyser indicated that the blood stains found on the clothes were of blood group "A". The report also

indicates that the blood group of the blood stains on the sickle could not be detected.

12. After analysing this evidence, we find that the eye witness account of PW5 and PW6, which is corroborated by the evidence of the complainant, is sufficient to indicate that the death of the deceased amounted to culpable homicide for which the accused was responsible. The accused has committed this heinous crime by mounting a dastardly attack on his father only because he felt aggrieved by the share of the agricultural land which was allotted to him. The motive for the attack has been established by the prosecution. There is no doubt that the accused had the intention to kill his father as he felt aggrieved by the fact that his father was looking after his deceased brother's family as well as the fact that his sister, Yamunabai, now owned a share in the family lands. Therefore, in our opinion, the trial Court has rightly convicted the accused under Section 302 of the Indian Penal Code. The offence committed by him does not fall within any of the named exceptions.

13. As a result, the Appeal fails and is dismissed.

(V.G.PALSHIKAR, J.)

(SMT.NISHITA MHATRE, J.)